Deepak Moorjani

Morgan Stanley Japan Limited

Yebisu Garden Place Tower
4-20-3 Ebisu, Shibuya-ku,
Tokyo 150-6008

Morgan Stanley

tel : (03) 5424 6012
fax : (03) 5424 7198

www.morganstanley.co.jp

deepak.moorjani@morganstanley.com

Morgan Stanley

To: The File Date: 21 November 2005

From: Deepak Moorjani

Subject: J-REIT LBO/MBO Analytics

Introduction

More and more investors have discovered the appeal of REITs. Creatures of tax law, REITs provide transparency, liquidity, more permanent management and corporate structures, easier access to all forms of capital including unsecured debt, and greater overall property market efficiency.

Consolidation in the Japanese REIT sector seems more than likely when valuations fall. As a comparison, the overall market capitalization of US REITs grew from $44.3 billion to $224.2 billion during 1994 through 2003, but the number of REITs declined from a peak of 225 to less than 175. Australia provides another example of consolidation. In Australia, there are 80 listed LPTs and other property firms with a total market cap of over $50 billion, and LPTs control nearly half of the institutional quality commercial real estate in Australia. However, the sector is dominated by five LPTs which account for 40 percent of the sector's market capitalization. The top 10 LPTs make up more than 65 percent of the sector.

In 1997-98, US REIT NAV premiums hit peak highs around 25-30% premiums to NAV. These numbers declined in the REIT bear market of 1999-2000 when REIT stocks significantly underperformed the overall market. By early 2000, REITs valuations hit bottom and were trading at more than a 10% discount to NAV. In this environment, a number of large REIT LBO/MBO transactions were consummated including Berkshire Realty, Sunstone, Irvine, Walden Residential and Patriot American. More recently, Capital Automotive, Gables Residential and CRT Properties have approved plans to go private at premiums of 9-15% over market price in 2005. In Oct 2005, MSREF announced its intention to acquire AMLI Residential for $2.1 billion, a 21% premium to market and a 1.9% premium to Green Street NAV.

The Japan Market

Japan's Investment Trust Law, enacted in November 2000, established the REIT vehicle, and two REITs were listed in September 2001. Today, listed JREITs total 28, including 13 newly-listed JREITs since the beginning of the year. J-REIT expansion has been aided by the JGB yield gap coupled with the liquidity, current income yield and transparency of the investment vehicle.

In Japan, we expect to see continued growth in the REIT sector with the secular shift from private to public ownership of real estate. However, the large and growing number of funds in Japan might not be sustainable without some consolidation. As companies compete for deals, asset prices continue to rise and cap rates continue to fall thereby making it more difficult to generate the returns demanded by the public shareholders. The pressure to reach critical mass will increase: with size comes the ability to cover wider territory, to save on expenses, to lower the cost of capital, and to increase liquidity. Additionally, private real estate firms can use more leverage than counterparts in the public market which provides additional financial clout to bid on pricey deals. Couple these with the changing of the guard at many private empires, and consolidation is likely to occur.

Naysayers might argue that management entrenchment, tax concerns, poison pills, and a variety of other factors will prevent consolidation. These issues do exist and are real barriers. In addition, REITs are not cheap enough in the aggregate for the LBO/M&A business to grow dramatically at current valuations. However, I believe the

structure of the REIT group and the timing of the property and market cycles will put enough pressure on the industry to consolidate (and decapitalize) over the next several years; consolidation forces will overcome these impediments.

LBO Analytics

Let's take a look at how the numbers might work in a REIT LBO. As an intro, we should remember that a PMV/LBO valuation may not equal net asset value. As a simplifying assumption, we have assumed that a discount to NAV is necessary for an attractive transaction; however, this is a limiting and potentially misleading assumption for two reasons:

- REITs that trade at a discount to NAV are **not** always cheap; NAV discounts are not necessarily a strong buy signal. Instead of the gap being closed by a sharp rise in REIT prices, it might be closed by capitalization rates rising. In other words, rather than have rising real estate prices, real estate values might decline.
- REITs that trade at a premium to NAV are **not** always expensive. One can argue that public REITs offer more than asset value; REITs come with management teams and operating companies. Thus, there is asset value and potentially intangible value.

In any case, private market buyers must account for a number of items that require a discount on public expectations of NAV. The haircut is associated with potentially higher cap rate assumptions, debt prepayment penalties and origination costs, and transaction fees. Together, these items could amount to 5% of NAV and must be included in any analysis of private market value. Like most discounts, the buy-side will probably be ahead of the sell-side and BODs on this issue. Let's look at these three factors in more detail.

1. More conservative cap rate assumptions - Calculations of NAV are dependent upon cap rate assumptions, and market cap rates are reflective of prevailing market conditions. However, private market buyers often incorporate higher cap rates in order to account for higher internal rate of return requirements and higher capital expenditure reserve assumptions. Recall that private market buyers generally seek 20%+ leveraged internal rates of return (IRRs) for their funds. This IRR can be broken down into two parts: an initial cash-on-cash return and future growth. In other words, private market buyers will typically price an LBO with a higher cap rate than market expectations in order to achieve required return hurdles.

Most real estate funds are in the market on a daily basis purchasing properties. In order to generate interest in an LBO, private buyers would need to purchase the REIT's underlying assets below the levels they could achieve in the private market. That translates into more conservative assumptions regarding initial cash returns, future growth rates, and ultimately the resulting property level cap rates.

2. Debt fees and prepayment penalties - Many REITs have agreed to restrain from the use of excessive leverage for two reasons (i) implicitly to generate high dividend yields for the REIT investor base and (ii) explicitly to satisfy the requirements of credit ratings agencies, especially if there is any unsecured public debt. A small but growing number of REITs have obtained corporate credit ratings and issued unsecured public debt. These ratings carry certain stipulations on leverage. Also, most public note offerings contain certain debt covenants. Fixed charge coverage ratios, secured debt/total debt ratios, and debt/total asset ratios are three such debt covenants. As a consequence of this ratings process, many REITs have agreed to essentially restrain from the use of excessive leverage.

By definition, an LBO changes this with leverage in the 75-90% range. In order to accommodate more leverage, the balance sheet needs to be refinanced; existing debt must be repaid and new mortgage debt must be issued in its place. This movement of capital is costly in two ways. First, existing debt may carry prepayment penalties and

make-whole provisions which would have to be factored into the LBO valuation model. Second, secured debt in many cases carries origination fees which also would have to be factored into the LBO valuation model. The combined total of debt prepayment penalties and new origination fees could amount to 2% percent of transaction value.

Not all REITs, however, have issued unsecured debt. To the extent that a REIT has remained a secured borrower, these costs would be circumvented, thereby saving money which could accrue to the benefit of all constituencies, including new buyers and existing shareholders.

3. Transaction fees - On average, LBO transaction costs could add as much as 3% to the total transaction value. Transaction fees are associated with legal, accounting, due diligence, and investment banking advisors. In most cases, private market buyers would factor (deduct) these costs when pricing the deal and would work them into their IRR expectations. We incorporate these fees into our analysis as well.

Financial Arbitrage

Despite transaction costs and a higher cap rate, a JREIT LBO still makes financial sense with NAV discounts around 10-20%. The reason is simple: **Leverage.** REIT investors want high-current income, and REITs must leverage in order to maintain high dividend payments. An LBO is a significant financial restructuring with an investor base that does not need or want the current income stream. In the following cases, we incorporate similar deal and transaction costs.

- In Case A, we have shown a scenario roughly equivalent to the average public J-REIT market now stands: 35% leverage, a 4% cap rate and 3% NOI annual growth. The model shows an initial cash-on-cash yield of 5% and an ending IRR of 8%.
- In Case B, we examine a simple LBO calculation with the same operating assumptions as Case A with 85% leverage and a higher cap rate of 5%. Under this scenario, we calculate an initial cash-on-cash return of 3.85% and an IRR of 29%. To make the deal work at the various premiums, an LBO buyer needs:
  - A 20% discount to NAV with a 1% cap rate premium
  - A 15% discount to NAV with a 0.75% cap rate premium
  - A 10% discount to NAV with a 0.50% cap rate premium was than the LBO buyer would only need.

Note that this analysis only considers the benefit of financial arbitrage. It does not include management arbitrage which might be significant depending on the identity of the seller. We have assumed a modest 3% yearly growth in NOI.

An examination of **US REIT M&A transactions** reveals that going-private REIT transactions have been consummated at a median 16% premium to market price and **an 8.6% median premium to Green Street NAV calculations.** In fact, there are very few examples of completed transactions at a discount to NAV, and on a case-by-case basis, we should assume that will be the ability to generate some level of management arbitrage via economies of scale, altered fee structure, or other avenue. A further study of U.S. financial buyer transactions and sources of value is forthcoming.

Governance Issues

Given the public market status of REITs, we need to consider the corporate governance issues pertaining to LBOs/MBOs for REITs. How can a transaction be priced so that it is acceptable to private market buyers and REIT shareholders? The REIT BOD safeguards shareholders against insufficiently priced deals including the LBO priced

below NAV shown in Case B. On the other hand, private market buyers may only be interested in sponsoring an LBO/MBO if pricing is opportunistic (i.e., below NAV). If REITs are only motivated to sell in the event of a fully priced deal, and buyers are only motivated to step up in the event of a compelling discount, can these deals happen?

A "do-nothing" strategy may not be in the best interests of shareholders. Certain companies would trade down to even lower levels if they announce that they are “not for sale.” In many cases, the correct decision would be to sell the company, even if pricing only enhanced rather than maximized shareholder value. Suppose REIT A was trading at a 20% discount to recently published NAV estimates and was either rumored or known to be exploring strategic alternatives, including an LBO/MBO. Let’s also suppose that a private market buyer was willing to pay a 10% discount to NAV in an LBO. Holding to the strictest of guidelines, REIT A’s BOD could spurn the LBO offer in hopes of a bid at NAV. If the BOD disclosed this to shareholders, REIT A stock would likely trade down even further. Most shareholders would be in no mood for more downside risk and would be more than willing to part with their shares at reasonable (short of maximal) pricing. In real estate terminology, shareholders would be willing to sell shares into a cash LBO at a reasonable (5 to 10 percent) discount to NAV. The alternative of share prices trading down another 10 percent or more would be far worse.

In the J-REIT sector, the investor base is approximately 42% foreign, 43% retail and 15% domestic institutions. We can assume that REIT shareholders will be sufficiently motivated by price.

Structural and Other Issues

The MSREF/PRIME acquisition of AMLI was structured as a take-private acquisition by a private REIT. The offer is at a 1.9% premium to NAV, and the transaction was structured to allow PRIME a step-up in tax basis.

We are considering a JREIT LBO scenario where **the resulting structure is not a private JREIT**. While private REITs are increasingly popular in the US, the private JREIT market does not exist in Japan. Furthermore, the structure should be unnecessary for MSREF. REITs are a tax-efficient way for certain investors to own real estate. If a private buyer can solve those same issues in an alternate way, the tax-advantaged structure of the REIT is probably not necessary. Current law is silent on REIT transactions, and internal checks indicate that a partnership acquisition of a JREIT should work. *Additionally, we have asked counsel at NOT to do a quick analysis for any legal hurdles that might stand in the way.*

Beyond legal issues, a JREIT deal needs to consider the element of personality. In many cases, these companies were founded as private companies with successful entrepreneurs who are used to being in control. Additionally, many of these people want the status that is provided by running a public JREIT.

Conclusion/Next Steps

A going-private JREIT transaction is simply taking advantage of private market/public market arbitrage when stock market and/or sector valuations decline. Currently, TOPIX is at 5-year highs, and despite the frenzy, some JREITs are trading below NAV. This situation probably worsens over time. As a private buyer, the financial restructuring of an LBO creates value, and it is a very efficient way to acquire a large portfolio of assets. It need not be the final step: the exit could simply be a new JREIT offering when public market values increase.

Currently, the residential sector seems to be most vulnerable. Names worth watching include Japan Single Residence (Creed), Propect Residential, New City Residence (CBRE), FC Residential (Fund Creation), and DA Office (DaVinci).

From: **Moorjani, Deepak (IBD)** Deepak.Moorjani@morganstanley.com
Subject: FW: JREIT
Date: December 26, 2005 at 9:52 PM
To: [redacted]

DM

-----Original Message-----
From: Kalsi, KS Sonny (IBD)
Sent: Wednesday, December 21, 2005 9:25 PM
To: Moorjani, Deepak (IBD); Schmidt, Fred (IBD)
Subject: Fw: JREIT

Fred and Deepak

Very compelling

Let's do work on these resi JREITs and buy shares in all and then initiate dialogue

-----Original Message-----
From: Moorjani, Deepak (IBD) <Deepak.Moorjani@morganstanley. <<Deepak REIT p-paids 10-24-05 v1.pdf>> <<JREIT LBO v2.pdf>> <<JREIT Corporate Governance.pdf>> com>
To: Kalsi, KS Sonny (IBD) <Sonny.Kalsi@morganstanley.com>
CC: Moorjani, Deepak (IBD) <Deepak.Moorjani@morganstanley.com>
Sent: Mon Dec 19 19:44:31 2005
Subject: JREIT

<<Deepak REIT p-paids 10-24-05 v1.pdf>> h <<JREIT LBO v2.pdf>> e <<JREIT Corporate Governance.pdf>> y sonny,

i simplified the JREIT memo to a 2-page powerpoint presentation (JREIT corporate governance). seems to be an easier read and better suited for the audience.

i like this idea for the following reasons:
- it's technical. retail investors are not thinking about this and really have never seen M&A in the JREIT sector. takeover premiums seem built into the public valuations of many public companies. not in this sector
- we won't be competing with small real estate funds. it's at the high-end with a smaller number of potential competitors. we probably have a chance to be in front of this market
- this market will definitely consolidate. the targets are $500mm-$1 billion portfolios. not a bad size trade
- the asset managers have already sold the portfolios. at this point, they are preserving fee income. offer an asset manager $10mm today instead of $1mm a year for 10 years. some guys might take that.

even if we buy at par, we can still generate 20-25% IRRs . . .

Deepak Moorjani
Morgan Stanley Japan Limited | Investment Banking Division Yebisu Garden Place Tower | 20-3, Ebisu 4-Chome, Shibuya-ku Tokyo, 150-6008
Phone: +81 3 5424-6012
Fax: +81 3 5424-7198
Deepak.Moorjani@morganstanley.com



Deepak REIT p-paids 1...v1.pdf

JREIT LBO v2.pdf

JREIT Corporate Governance.pdf

WHITE & CASE

Newsletters

Morgan Stanley Discloses Internal Investigation of Possible FCPA Violations

March 2009
Foreign Corrupt Practices Act Developments Update, March 2009
In its February 9, 2009 8-K Report, Morgan Stanley disclosed that "it has recently uncovered actions initiated by an employee based in China in an overseas real estate subsidiary that appear to have violated the Foreign Corrupt Practices Act." That employee, Garth Peterson, was Morgan Stanley's top property deal-maker in China until he was terminated in December 2008. Morgan Stanley has also put Sonny Kalsi, its global head of real estate investing, on administrative leave as a result of this recent disclosure. Public reports indicate that the activities in question are related to Morgan Stanley's real estate practice in China, which invests in real estate with various state-owned entities. Some Chinese officials involved in certain property market transactions have been arrested on corruption-related charges, including Shanghai's former mayor Chen Liangyu, who was arrested in 2006 for corruption that was partly related to property deals.

The disclosure and investigation highlight the fact that even large, multinational companies are carefully evaluating their FCPA liability and taking swift action to investigate and remediate the problem when any issues like this arise. The Morgan Stanley situation also illustrates two areas of increased enforcement for the DOJ: individuals and the financial services industry. The DOJ continues to pursue prosecutions of individuals, like Messrs. Peterson and Kalsi, who are involved in possible FCPA violations. The DOJ is also actively pursuing the financial services industry, as evidenced by recent comments from the Fraud Section's Deputy Chief, Mark F. Mendelsohn, suggesting that the financial services industry's conduct could "pose risks" under the FCPA and that the industry "will be in focus" going forward.

White & Case LLP's White Collar Practice Group will continue to provide updates regarding emerging FCPA enforcement actions.

Follow these links for additional information:

- Morgan Stanley's February 2009 8-K Report can be found here
- Additional press reports can be found here and here

Follow these links for additional articles from the *Foreign Corrupt Practices Act Developments Update*, March 2009:

- Former Halliburton Subsidiary Announces $579 Million in Penalties in Largest-Ever FCPA Disposition Against a US Company
- UK Financial Services Authority Fines Aon Ltd. $8 Million for Anti-Corruption Violations
- SEC Announces $1.7 Million Settlement of Alleged Accounting Violations Agreement with ITT Corporation
- Former US Executives Plead Guilty to Bribing Foreign Government Officials in Violation of the FCPA

EX-99.3 5 dex993.htm LETTER FROM RICHARD H. WALKER

Exhibit 99.3

Richard H. Walker
General Counsel

Deutsche Bank AG
Legal Department
60 Wall Street, MS NYC60-3601
New York, NY 10005

Tel 212-250-8200
Fax 212-797-4569

richard.h.walker@db.com

January 29, 2008

Mr. Gary C. Dunton
Chief Executive Officer and President
MBIA Inc.
113 King Street
Armonk, NY 10504

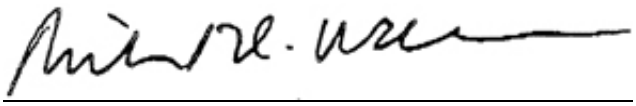
Dear Gary:

I have concluded that I should resign from MBIA's Board. I do so with great regret and only after very careful consideration of the interests of both MBIA and Deutsche Bank.

When I joined MBIA's Board in 2006, existing business relationships between MBIA and Deutsche Bank provided no basis to believe that I would be unable to give both institutions my full attention and undivided loyalty. Given the events of the past week, however, I am now in a position where I can no longer be confident that continuing to act on behalf of both institutions will not lead to the possibility of an appearance that I may have reason to favor one over the other on a matter of great importance to both. In these circumstances, my ability to continue to act on behalf of either institution may be constrained. Given the importance of restoring credibility in the marketplace, I would not want my role to become a distraction to ongoing efforts to achieve this goal.

I am proud to have been associated with MBIA, and I would have liked to continue serving on MBIA's Board. I leave the Board with great affection for all my fellow directors and with appreciation for their wisdom and dedication. I would also be remiss if I did not applaud the exceptional MBIA staff. I am confident that this top-flight staff, with the Board's support, will guide MBIA to future successes.

Sincerely,



Richard H. Walker

cc: Members of the Board of Directors

FOR IMMEDIATE RELEASE 2001-68

Richard H. Walker, Director of Enforcement, to Leave the SEC

Ten-Year Tenure at Commission Also Includes Service as General Counsel and Director of Northeast Regional Office

Washington, D.C., July 10, 2001 - Richard H. Walker, Director of the Securities and Exchange Commission's Division of Enforcement, announced today that after 10 years of service, he will be leaving the Commission and will return to the private sector. He has not yet accepted a new position and will remain at the Commission for a short period to assist with the transition to a new Chairman.

Acting Chairman Laura Unger said, "America's investors have benefited greatly from Dick Walker's presence at the SEC. He has served the Commission masterfully in three demanding positions, bringing enormous intellect, judgment and grace to each. He has been a leader of the staff, an ambassador of the agency, and a respected colleague and friend."

Mr. Walker said, "It has been a privilege to spend 10 years at this great agency and to work with colleagues who are the best in government. I am extremely proud to have had a hand in the Commission's work and to have contributed to its mission of protecting investors. The opportunity to serve under three distinguished Chairmen and nine outstanding Commissioners, working side by side with countless members of the staff who inspire me daily with their talent and dedication, has been the highlight of my legal career."

Mr. Walker became Director of Enforcement in 1998 after serving as the Commission's General Counsel from 1996 to 1998 and Regional Director of the Commission's Northeast Regional Office in New York from 1991 to 1996. As Director of Enforcement, Mr. Walker headed the Commission's largest Division and directed the Commission's nationwide enforcement effort. He spearheaded the Division's attack against earnings management and other financial reporting abuses, established the Commission's Internet enforcement program, and led the Commission's efforts to secure more criminal prosecutions for violations of the federal securities laws.

* Mr. Walker was the driving force behind some of the most significant financial fraud cases ever brought by the Commission, including those involving W.R. Grace, Livent, Cendant, McKesson HBOC, Microstrategy, Sunbeam, and Arthur Andersen, and the 1999 landmark auditor independence case against PricewaterhouseCoopers.

* In the Internet arena, Mr. Walker created the Division's Office of Internet Enforcement and led the Commission's attack against Internet securities fraud.

Those efforts have resulted in approximately 250 cases to date, including successful prosecutions relating to manipulations of PairGain, Emulex and Lucent.

* Mr. Walker forged strong partnerships with federal, state and local prosecutors and the F.B.I., resulting in record numbers of criminal prosecutions of securities violations. He aggressively attacked microcap fraud and organized crime involvement in securities activities through coordinated civil and criminal prosecutions. He also orchestrated the Commission's participation in major undercover sting operations, including Operation Thorcon (resulting in multiple successful prosecutions and civil cases arising out of bribes by corrupt promoters) and Operation Uptick (involving the largest number of people ever charged with securities fraud -- over 100 -- including organized crime affiliates).

Mr. Walker received numerous awards during his tenure at the Commission, including the Chairman's Award for Excellence under both Chairman Levitt and Chairman Breeden, the Commission's Distinguished Service Award, the Presidential Rank Distinguished Service Award and the Commission's Law and Policy Award, awarded for his participation in the government's successful appeal in U.S. v. O'Hagan, which upheld the misappropriation theory of insider trading.

Before joining the Commission, Mr. Walker was a partner at Cadwalader, Wickersham & Taft in New York City. He began his legal career as a law clerk to Chief Judge Collins J. Seitz of the U.S. Court of Appeals for the Third Circuit.

Mr. Walker received his B.A. from Trinity College in 1972 where he was a member of Phi Beta Kappa. He received his J.D., cum laude, from Temple Law School, where he was Editor-in-Chief of the Temple Law Quarterly.

* * * *

乙第五二号証の一

(2) Daiki Kajino/db/dbcom
2007/05/09 19:19

To Tomohiko Kimura/Tokyo/DBJapan/DeuBa@DBAPAC
cc
bcc
Subject Fw: Staff - Privileged & Confidential

Kimura-san

As we discussed in this morning, I explained the current situation to Murakami-san in HR.
After that, I arranged conference call with Sunil Madan and it is already fixed on tomorrow at 17:00 (Tokyo Time).
Murakami-san and I will have a conference call with him and ask him about our concerns.
If you need to join it, please let me know.

As to investigation of Frank's e-mail for Pipeline issue, I will start it as soon as I obtain Mitch's approval.

Regards,

☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆
Daiki Kajino (梶野 大毅)
Compliance Department
Deutsche Bank AG, Tokyo Branch
Tel : +81-3-5156-7738
Fax: +81-3-5156-6006
daiki.kajino@db.com
☆☆☆☆☆☆☆☆☆☆☆☆☆☆☆

----- Forwarded by Daiki Kajino/db/dbcom on 2007/05/09 19:13 -----

(1) Mark Grolman/Sydney/DBAustralia/DeuBa@DBAPAC
2007/05/09 19:09

To "Dick Walker" <richard.h.walker@db.com>, janice.reznick@db.com, rachel.blanshard@db.com, jiana.leung@db.com, "Kiyoshi Murakami" <kiyoshi.murakami@db.com>, "Andrew Hume" <andrew.hume@db.com>, "Daiki Kajino" <daiki.kajino@db.com>, "Mr. Tomohiko (Tom) Kimura" <tomohiko.kimura@db.com>
cc
Subject Staff - Privileged & Confidential

PRIVILEGED & CONFIDENTIAL

Below are draft notes of the interview I had with Frank Forelle yesterday.

NEXT STEPS

I suggest for your condsideration that the next steps should be:

(a) we interview Sunil Madan. Tom Kimura has agreed to do that by telephone as soon as possible this week;

(b) when Deepak Moorjani returns to Tokyo from the US next week, we press him again to produce all evidence he has of any alleged violations or wrongdoing. In the two weeks since he was interviewed he has not produced any evidence;

(c) agree a letter to Mr Moorjani in response to his letter. I suggest that this letter be signed by David Hatt as President and CEO of DSI (the employer of Mr Moorjani). David Hatt has been briefed on this matter. I will draft the response letter for your review. Once agreed, that letter should be delivered to Mr Moorjani.

I also propose giving the draft notes of meeting to Frank Forelle to check for accuracy.

From: **John Markoff** markoff@nyt.com
Subject: Re: Via Michael Spindler
Date: [illegible]
To: DEEPAK MOORJANI [illegible]

JM

I will be glad to....

On Oct 10, 2007, at 8:54 AM, DEEPAK MOORJANI wrote:

> Hi John,
>
> It's actually a story about Wall Street and corporate governance. I'd like to send some materials and ask you to forward internally.
>
> Thank you.
>
> Deepak
>
> On Oct 8, 2007, at 12:57 AM, John Markoff wrote:
>
> > Let me know what you have in mind.... Is it related to technology?
> >
> > On 10/6/07, DEEPAK MOORJANI [illegible]te:Hi John,
> >
> > Thanks. I just asked a friend (Tony Fadell) if he knows a reporter
> > who is trustworthy and good, and he recommended you. Told him that we
> > were already in touch. Small world.
> >
> > Best,
> > Deepak
> >
> > On Oct 5, 2007, at 9:41 PM, John Markoff wrote:
> >
> > > Hi Deepak,
> > >
> > > Good to hear from you. The Times New Bureau in SF is at the address
> > > below.
> > >
> > > best,
> > >
> > > John
> > >
> > >
> > >
> > > ==========
> > > John Markoff Voice: (415) 836-6700/415 644 3311
> > > West Coast Correspondent Cell: (415) 606 0126
> > > New York Times
> > > 201 Spear St. #1560 markoff@nytimes.com jmarkoff@gmail.com
> > > San Francisco, CA 94105 http://www.nytimes.com
> > > ==========
> > >
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> > >
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> > >
> > > On Oct 4, 2007, at 7:52 PM, DEEPAK MOORJANI wrote:
> > >
> > >> Hi John,
> > >>
> > >> You may or may not remember, but I got your name from Michael (he
> > >> and I ran a venture firm in Silicon Valley for a number of years).
> > >> I never did connect with Melanie Warner, but I heard she got
> > >> married and moved to Colorado.
> > >>
> > >> Is your mailing address at 555 Montgomery? I think there might be
> > >> a story over here . . . and I'd like to ask you to forward certain
> > >> materials to the appropriate person in your organization.
> > >>

Tokyo Summary Court Consolidates Deutsche Bank Litigation

Pressemitteilung von: Deutsche Bank AG

(openPR) - Tokyo, Japan (July 11, 2008) – Today, the Tokyo Summary Court ordered the consolidation of a Deutsche Bank AG lawsuit into an existing lawsuit in Tokyo District Court.

On June 6, 2008, Deutsche Securities Inc., a subsidiary of Deutsche Bank AG, filed a lawsuit against one of its employees in Tokyo Summary Court (Case #13543). David Hatt, CEO of Deutsche Securities Inc., filed to have JPY 912,000 in rental payments (approx. US$8,690) reimbursed to the firm.

Defendant's counsel successfully motioned to have Deutsche Bank's claim consolidated into Tokyo District Court. Tokyo Summary Court consolidated the claim despite objections from Deutsche Bank.

In Tokyo District Court, Deutsche Securities Inc. is the defendant in a claim for breach of contract between the parties. The breach of contract claim was filed in February 2008 (Case #4109) by Yasushi Higashizawa of Kasumigaseki Sogo Law Office. In this same period, Deutsche Bank unilaterally stopped making payments under the rental contract.

In Tokyo Summary Court, Deutsche was represented by Shiro Muto of Deutsche Securities Inc., Takashi Asai of Dai-Ichi Fuyo Law Office and Naoko Yatabe of Apple Law Office. The defendant was represented by Yasushi Higashizawa of Kasumigaseki Sogo Law Office. 就労請求

David Hatt
Deutsche Securities Inc.
(813) 5156-6002
david.hatt@db.com

Michael Cohrs
Deutsche Bank AG
(4420) 754-56091
michael.cohrs@db.com

About Deutsche Bank AG
Deutsche Bank is a leading global investment bank with a strong and profitable private clients franchise. A leader in Germany and Europe, the bank is continuously growing in North America, Asia and key emerging markets. With 78,275 employees in 76 countries, Deutsche Bank offers unparalleled financial services throughout the world. The bank competes to be the leading global provider of financial solutions for demanding clients creating exceptional value for its shareholders and people.

From: **Michiyo.Nakamoto@ft.com** Michiyo.Nakamoto@FT.com
Subject: Your Deutsche case
Date: February 19, 2009 at 5:32 PM
To: [redacted]

Hello, I have received several emails from you and others regarding your case against Deutsche. Would it be possible to meet some day to discuss the situation?

Michiyo Nakamoto
Deputy Bureau Chief
Tokyo Bureau
Financial Times
phone 813-3581-2439
fax 813-3581-0366
mobile 8190-9671-7907

From: DEEPAK MOORJANI [redacted]
Subject: Re: HuffPo
Date: April 12, 2009 at 8:32 PM
To: Andrew Sorkin sorkin@nytimes.com

DM

Hi,

This is my bio from the Huffington Post:

Deepak Moorjani is an employee and shareholder of Deutsche Bank AG. The views expressed herein are his own and do not necessarily represent the views of Deutsche Bank AG.

Yes, I'll be on email.

Thank you.

Deepak

On Apr 13, 2009, at 12:23 PM, Andrew Ross Sorkin wrote:

> thanks. how can we identify you? also: i may need to send you an email so you can sign an electronic release so we can publish it. will you be on email in the morning?
>
> On Sun, Apr 12, 2009 at 10:34 PM, DEEPAK MOORJANI [redacted] wrote:
> Some minor changes as discussed. Please let me know when it's posted. Thank you.
>
> When speaking about the banking sector, many people mention a "subprime crisis" or a "financial crisis" as if recent write-downs and losses are caused by external events. Where some see coincidence, I see consequence. At Deutsche Bank, I consider our poor results to be a "management debacle," a natural outcome of unfettered risk-taking, poor incentive structures and the lack of a system of checks-and-balances. In my opinion, we took too much risk, failed to manage this risk, and broke too many laws and regulations.
> For more than two years, I have been working internally to improve the inadequate governance structures and lax internal controls within Deutsche Bank AG. I joined the firm in 2006 in one of its foreign subsidiaries, and my due diligence revealed management failures as well as inconsistencies between our internal actions and our external statements.
>
> Beginning in late 2006, my conclusions were disseminated internally on a number of occasions, and while not always eloquently stated, my concerns were honest. Unfortunately, raising concerns internally is like trying to clap with one hand. The firm retaliated, and this raises the question: Is it possible to question management's performance without being marginalized, even when this marginalization might be a violation of law? Two years later, our mounting losses are gaining attention, and I offer my experiences and my thoughts in the hopes of contributing to the shareholder and public policy debate.
>
> Background
> Born and raised in Toledo, Ohio, I was infused with Midwestern values of hard work, individual responsibility, honesty, quiet integrity and fiscal prudence. After careers in New York City and Menlo Park, I moved to Tokyo in 2005 to pursue investments in corporate restructurings and distressed assets. At the time, the Japanese market offered unique opportunities.
>
> I joined Deutsche Bank in 2006 to build an investment business within its commercial real estate lending operation, and I was generally surprised by the aggressive sales culture within our firm. While many people consider the banking sector's problems to be caused by residential lending, I witnessed multi-billion dollar loan proposals for commercial property. With funds provided at more than 90% loan-to-value, these loans were "priced to perfection" and assumed that property prices and rental rates would continue to rise. For perspective, a single billion-dollar commercial real estate loan is equivalent to 2,000 residential loans of $500,000.
>
> In general, my colleagues are hard-working, decent people, but the system of incentives encourages people to take risks. I have seen honest, high-integrity people lose themselves in this cowboy culture, because more risk-taking generally means better pay. Bizarrely, this risk comes with virtually no liability, and this system of OPM (Other People's Money) insures that the firm absorbs any losses from bad trades.
>
> As these losses have grown, taxpayers are being forced to absorb these losses. As an example, my firm recently received nearly $12 billion from AIG (which has effectively been nationalized with $180 billion in taxpayer funds). Essentially, every American household sent my firm a check for $105. The reason for this payment: my firm bought credit default swaps from AIG. In plain-speak, we bought unregulated "insurance" from AIG to cover losses from bad trades. What did taxpayers get in return? Nothing. Taxpayers simply paid an IOU triggered by our gambling losses. (Note: This $12 billion payment was more than 50% of our market capitalization at the time of its disclosure).

Solution
While shareholders (and taxpayers) are becoming angry, I think they should be furious. Our management has eviscerated the concept of moral hazard by systematically adopting pay schemes that reward excessive risk-taking despite its long-term implications. If governments have decided to socialize our losses, governments are implicitly saying that the banking industry is fundamentally sound. In effect, governments would be voting in favor of the status quo. In my opinion, the status quo does not work, and we need to address the core issues of structure and compensation. Capping executive compensation is a first step, but as a solution, it is insufficient.

While I am on the "inside" at Deutsche Bank, much of my career has been within partnership structures, and I continue to advocate a partnership-like structure for our firm. With collective liability, partnerships provide a proper alignment of incentives between management and its stakeholders. In a partnership, bonuses are paid from co-investments and profits, not revenues. Losses are shared, and these losses introduce an appropriate penalty for excessive risk-taking. If profits are overstated in one-year, the already-paid bonuses are clawed-back (returned to the partnership).

Conclusion
Our asymmetric incentive structure is fundamental to our problems. The question remains: Do we maintain the status quo and naively hope for better results, or do we begin to implement structural reforms in order to align the incentives? If taxpayers are forced to pay for the losses from bad trades, this socialization of risk adds to the moral hazard problem. This socialization of risk actually encourages more aggressive behavior in the future.

The call-option bonus structure has led to the ascendency of sales over risk management. Maintaining the status quo is not a smart bet, and we cannot afford to ignore the fundamental issues of structure and compensation. We need to introduce personal responsibility into the system, because accountability is glaringly absent. The collective liability aspect of partnerships achieves this goal; collective liability is the most powerful way to align incentives and encourage rational risk-taking.

As an employee and as a shareholder, I am doing my part to build a better firm. Unfortunately, the political landscape within our firm finds it difficult to assimilate any criticism of management's leadership. To my fellow employees, I ask that you resist the incentives that reward groupthink. To my fellow shareholders, I ask that you implement the changes needed to address our asymmetric incentive structures.

On Apr 13, 2009, at 10:48 AM, Andrew Ross Sorkin wrote:

ok. go for it.

On Sun, Apr 12, 2009 at 9:45 PM, DEEPAK MOORJANI [redacted] wrote:
thanks for the feedback. i'm open to it, but i'd like to edit the second to last paragraph (which doesn't flow very well, in my opinion).
does this work?

On Apr 13, 2009, at 10:12 AM, Andrew Ross Sorkin wrote:

this is great. i only wish you had written it for us! can we publish it in full on our site too?

On Sun, Apr 12, 2009 at 8:15 PM, Deepak Moorjani [redacted] wrote:
Hi Andrew,

I'd like to send this posting for your review.

I hope you are well.

Deepak

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.....

Andrew Ross Sorkin
The New York Times
Tel. +1 212 556 8082
Mob. +1 917 209 6269
sorkin@nytimes.com

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.....

Andrew Ross Sorkin
The New York Times
Tel. +1 212 556 8082
Mob. +1 917 209 6269
sorkin@nytimes.com

From: DEEPAK MOORJANI
Subject: Open Hearing, Friday April 17
Date: April 13, 2009 at 4:57 PM
To: Michiyo Nakamoto michiyo.nakamoto@ft.com
Cc: Greg Farrell greg.farrell@ft.com, Henny Sender henny.sender@ft.com

DM

Hi Michiyo,

We're prepping for Friday's court hearing. Unlike most of the previous hearings, this Friday's court hearing will be open to the public. The court will be examining witnesses at Tokyo District Court: Steve Adang at 9am. Murakami at 1pm. Moorjani at 3pm.

We've already confirmed that the press will be attending. I'll be with counsel in court all day, and you are welcome to join.

Thank you.

Deepak

On Feb 25, 2009, at 11:43 PM, DEEPAK MOORJANI wrote:

> Hi,
>
> The attached is our most recent filing, and it summarizes the legal case. We had a court hearing yesterday, and I'm on the road for the rest of the week. Is there a decent time to speak via phone on Friday?
>
> Thank you.
>
> Deepak
>
> [The attachment DBG Filing 012609.pdf has been manually removed]
>
> On Feb 20, 2009, at 9:32 AM, Michiyo.Nakamoto@FT.com wrote:
>
> > Hello, I have received several emails from you and others regarding your
> > case against Deutsche. Would it be possible to meet some day to discuss the
> > situation?
> >
> > Michiyo Nakamoto
> > Deputy Bureau Chief
> > Tokyo Bureau
> > Financial Times
> > phone 813-3581-2439
> > fax 813-3581-0366
> > mobile 8190-9671-7907
> >
> > **********
> > This email was sent by a company owned by Pearson plc, registered office at
> > 80 Strand, London WC2R 0RL.
> > Registered in England and Wales with company number 53723

From: **Michiyo.Nakamoto@ft.com** Michiyo.Nakamoto@FT.com
Subject: Re: Open Hearing, Friday April 17
Date: April 14, 2009 at 12:39 AM
To: [redacted]

Hi Deepak, thanks for the heads-up. The attachment with the filing did not arrive. Could you possibly re-send it? Many thanks.

Michiyo Nakamoto
Deputy Bureau Chief
Tokyo Bureau
Financial Times
phone 813-3581-2439
fax 813-3581-0366
mobile 8190-9671-7907

The New York Times
DealBook
Edited by Andrew Ross Sorkin

APRIL 16, 2009, 1:27 PM

Another View: Deutsche Bank's Culture of Risk

***Deepak Moorjani**, an employee and shareholder of Deutsche Bank, offers his views on his firm's risk-taking and the reward structure that he says helped encourage it. Mr. **Moorjani** is currently involved in litigation with a unit of Deutsche Bank; the views he expresses are his own and do not necessarily represent the views of Deutsche Bank.*

When speaking about the banking sector, many people mention a "subprime crisis" or a "financial crisis" as if recent write-downs and losses are caused by external events. Where some see coincidence, I see consequence. At Deutsche Bank, I consider our poor results to be a "management debacle," a natural outcome of unfettered risk-taking, poor incentive structures and the lack of a system of checks and balances.

In my opinion, we took too much risk, failed to manage this risk and broke too many laws and regulations.

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Press Releases

Frankfurt am Main, March 16, 2012

Deutsche Bank to expand its Group Executive Committee

Deutsche Bank's (XETRA: DBKGn.DE / NYSE: DB) Management Board announced today that it will expand the Group Executive Committee (GEC) from 12 to 18 members, effective June 1, 2012. The GEC's members will be:

Jürgen Fitschen (63), designated Co-Chairman of the Management Board and the GEC;
Anshu Jain (49), designated Co-Chairman of the Management Board and the GEC;
Stefan Krause (49), Chief Financial Officer and a Member of the Management Board;
Rainer Neske (47), Head of Private & Business Clients and a Member of the Management Board;
Stephan Leithner (45), designated Human Resources, Legal and Compliance Head; CEO of Europe (ex Germany and UK); and a Member of the Management Board;
Stuart Lewis (46), designated Chief Risk Officer and a Member of the Management Board;
Henry Ritchotte (48), designated Chief Operating Officer and a Member of the Management Board;
Gunit Chadha (50), designated Co-CEO of Asia Pacific;
Alan Cloete (49), designated Co-CEO of Asia Pacific;
Michele Faissola (43), designated Head of Asset & Wealth Management;
Colin Fan (39), designated Co-Head of Corporate Banking & Securities and Head of Sales & Trading;
David Folkerts-Landau (62), Head of Research;
Colin Grassie (50), CEO of the United Kingdom;
Robert Rankin (48), designated Co-Head of Corporate Banking & Securities and Head of Corporate Finance;
Christian Ricken (45), Chief Operating Officer of Private & Business Clients;
Werner Steinmüller (57), Head of Global Transaction Banking; and
Richard Walker (61), General Counsel.

The Bank plans in due course to appoint a successor to Seth Waugh, outgoing CEO of the Americas, who, like him, will be a GEC member.

Current GEC members Kevin Parker, Head of Asset Management, and Pierre de Weck, Head of Private Wealth Management, will stand down as GEC members, on May 31, 2012, the day of the Annual General Meeting.

Josef Ackermann, Chairman of the Management Board and the Group Executive Committee of Deutsche Bank, said: "Together with my colleagues, I am deeply grateful to Pierre and Kevin for their longstanding service to our bank and their outstanding contributions to its success. Pierre has built a world-class Private Wealth Management. Kevin has greatly developed our Asset Management over the years and turned it into an increasingly profitable business. I wish both all the best for the future."

Jürgen Fitschen and Anshu Jain, designated Co-Chairmen of the Management Board and the Group Executive Committee of Deutsche Bank, said: "By expanding the Group Executive Committee, we are bringing together a broad team of leaders from our businesses, regions and infrastructure functions at one shared table. This new generation of long-serving managers reflects the Bank's growth and evolution over the past decade. Our team's collective mission will be to serve the best interests of the Bank and all of its many important stakeholders."

For further information, please call:

Deutsche Bank AG

Press & Media Relations
Phone: +49 69 910 43800 (Frankfurt)
db.presse@db.com

Investor Relations
+49 69 910 35395 (Frankfurt)
+1 212 250 1540 (New York)
db.ir@db.com

About Deutsche Bank

Deutsche Bank is a leading global investment bank with a substantial private clients franchise. Its businesses are mutually reinforcing. A leader in Germany and Europe, the bank is continuously growing in North America, Asia and key emerging markets. With more than 100,000 employees in 72 countries, Deutsche Bank offers unparalleled financial services throughout the world. The bank competes to be the leading global provider of financial solutions, creating lasting value for its clients, shareholders, people and the communities in which it operates.

www.db.com